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WESTERN ENVIRONMENTAL LAW CENTER

VIA FOIAONLINE.REGULATIONS.GOV

U.S. Environmental Protection Agency Headquarters

Re: Freedom of Information Act Request

Dear FOIA Officer:

This is a request under the Freedom of Information Act, 5 U.S.C. § 552, as amended (“FOIA”), from Western Environmental Law Center (“WELC”), a nonprofit organization whose purpose is to use the power of the law to safeguard the public lands, wildlife, and communities of the western United States in the face of a changing climate.

REQUESTED RECORDS

WELC requests records of the following type in the possession, custody, or control of the U.S. Environmental Protection Agency (“EPA”) for the time period starting from January 19, 2017, through the present:

1. All records that mention, discuss, refer to, or involve the Lower Duwamish Waterway Superfund Site in Seattle, Washington, EPA number WA00002329803 (“LDW”), and the EPA’s updated risk assessment of Benzo[a]pyrene (“BaP”) released on its Integrated Risk Information System (“IRIS”) in January 2017.
2. All records that mention, discuss, refer to, or involve the updated risk assessment for BaP released on IRIS January 2017 and the remedial action levels and cleanup levels of polycyclic aromatic hydrocarbons (“cPAHs”) established in the Record of Decision (“ROD”) for the LDW signed on November 21, 2014.
3. All memoranda, white papers, reports, research papers, and other documents that mention, discuss, and/or analyze the updated risk assessment for BaP released on IRIS January 2017 and the remedial action levels and cleanup levels of cPAHs established in the ROD for the LDW.
4. All records that mention, discuss, refer to, or involve the LDW that request, suggest, mention or initiate consideration by the EPA of modification of the remedial action levels and cleanup levels of cPAHs established in the ROD for the LDW.



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5. All records that mention, discuss, refer to, or involve the LDW that request, suggest, mention or initiate consideration by the EPA of development of an Explanation of Significant Differences (“ESD”) consistent with the Section 117(c) of the Comprehensive Environmental Response, Compensation, and Liability Act (“CERCLA) modifying remedial action levels and cleanup levels cPAHs established in the ROD for the LCW.

6. All records that have been deleted which fit the above specifications and which remain recoverable in any way. If fulfilling this specification requires additional time, we would ask that production of documents meeting specifications 1-5 be given priority and processed separately from any potential responsive records to this specification.

For this request, “records” means information of any kind, including writings (handwritten, typed, electronic or otherwise produced, reproduced or stored), letters, memoranda, correspondence, notes, applications, completed forms, studies, reports, reviews, guidance documents, policies, telephone conversations, telefaxes, emails, documents, databases, drawings, graphs, charts, photographs, minutes of meetings, electronic and magnetic recordings of meetings, and any other compilation of data from which information can be obtained. Without limitation, the records requested include records relating to the topics described below at any stage of development, whether proposed, draft, pending, interim, final or otherwise. All of the foregoing are included in this request if they are in the possession of or otherwise under the control of EPA, National Headquarters and all of its Offices, Regions and other subdivisions.

You may also specifically exclude from processing and release any records that are publicly available (e.g., through regulations.gov).

EXEMPT RECORDS

If you determine that portions of the records requested are exempt from disclosure, we request that you segregate the exempt portions and deliver the non-exempt portions of such records to my attention at the address below within the statutory time limit. 5 U.S.C. § 552(b). If EPA denies all or part of this request, please cite the specific exemptions you believe justify your refusal to release the information and notify us of your appeal procedures available under the law. Under rolling production we seek responsive records processed and produced independent of any others where the production is not dependent upon other records being released.

FORMAT OF REQUESTED RECORDS



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Under FOIA, you are obligated to provide records in a readily-accessible electronic format and in the format requested. See, e.g., 5 U.S.C. § 552(a)(3)(B) (“In making any record available to a person under this paragraph, an agency shall provide the record in any form or format requested by the person if the record is readily reproducible by the agency in that form or format.”). “Readily-accessible” means text-searchable and OCR-formatted. See 5 U.S.C. § 552(a)(3)(B). Please provide all records in a readily-accessible, electronic .pdf format. Additionally, please provide the records either in (1) load-ready format with a CSV file index or excel spreadsheet, or if that is not possible; (2) in .pdf format, without any “portfolios” or “embedded files.” Portfolios and embedded files within files are not readily-accessible. Please do not provide the records in a single, or “batched,” .pdf file. We appreciate the inclusion of an index.

RECORD DELIVERY

We appreciate your help in expeditiously obtaining a determination on the requested records. As mandated in FOIA, we anticipate a reply within 20 working days. 5 U.S.C. § 552(a)(6)(A)(i). Failure to comply within the statutory timeframe may result in WELC filing an action before the relevant U.S. District Court to ensure timely receipt of the requested materials. You may email copies of the requested records to: calkins@westernlaw.org

If you are unable to deliver the documents through electronic means, please deliver the documents to: Jennifer Calkins, 6224 41st Ave NE, Seattle WA 98115.

FEE WAIVER REQUEST

I respectfully request that you waive all fees in connection with this request as provided by 5 U.S.C. § 552(a)(4)(A)(iii) and 40 C.F.R. § 2.107(l). WELC is a leading public interest organization seeking to protect people, other species, and the environment, the waters, across the western United States. WELC has routinely received fee waivers under FOIA.

FOIA was designed to provide citizens a broad right to access government records. FOIA’s basic purpose is to “open agency action to the light of public scrutiny,” with a focus on the public’s “right to be informed about what their government is up to.” *U.S. Dep’t of Justice v. Reporters Comm. For Freedom of Press*, 489 U.S. 749, 773-74 (1989) (internal quotation and citations omitted). In order to provide public access to this information, FOIA’s fee waiver provision requires that “[d]ocuments shall be furnished without any charge or at a [reduced]



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charge,” if the request satisfies the standard. 5 U.S.C. § 552(a)(4)(A)(iii). The 1986 fee waiver amendments were designed specifically to provide non-profit organizations such as WELC access to government records without the payment of fees. *Ettlinger v. FBI*, 596 F. Supp. 867, 872 (D. Mass. 1984) (fee waiver provision intended “to prevent government agencies from using high fees to discourage certain types of requesters and requests,” which are “consistently associated with requests from journalists, scholars, and non-profit public interest groups.”).

As explained below, this FOIA request satisfies the factors listed in EPA’s governing regulations for waiver or reduction of fees, as well as the requirements of fee waiver under the FOIA statute—that “disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.” 5 U.S.C. § 552(a)(4)(A)(iii), *see also* 40 C.F.R. § 2.107(l).

1. The subject matter of the requested records must specifically concern identifiable “operations and activities of the government.”

The requested records relate to EPA’s decision to initiate and draft an ESD affecting the remedial action levels and cleanup levels cPAHs at a superfund site in Seattle, Washington, the LDW. These records will contribute to an understanding of the operations and actions of the EPA relative superfund site cleanup. Given EPA’s authority over superfund sites, these activities are “identifiable operations or activities of the government.”

2. The disclosure of the requested documents must have an informative value and be “likely to contribute to an understanding of Federal government operations or activities.”

Disclosure of the requested records will allow the WELC to convey information to the public about how the EPA makes decisions to modify the remedial action and cleanup levels of toxic substances for superfund sites following issuance of a ROD. This is an issue of heightened public interest and concern, particularly in areas in and around superfund sites affected by the toxicological review of Benzo[a]pyrene issued by the EPA in January 2017.

Once the requested documents are made available, WELC will analyze them and present its findings to local groups involved with the LDW superfund site, groups involved with other sites implicated by the toxicological review of Benzo[a]pyrene issued by the EPA in January



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2017, and the general public. WELC will make this information available to the public in a manner that will meaningfully enhance the public’s understanding of EPA’s decision-making process when it decides develop an ESD that impacts remedial action levels and clean levels of toxic substances for superfund sites. The documents requested will thus be “meaningfully informative” and “likely to contribute” to an understanding of EPA’s operations. The requested records are not otherwise in the public domain and are not accessible other than through a FOIA request. Indeed, the request explicitly excludes those documents already available through regulations.gov. Thus, the requested documents provide information that is not already in the public domain and are accordingly likely to meaningfully contribute to public understanding of governmental operations.

3. The disclosure must contribute to the understanding of the public at large, as opposed to the individual understanding of the requester or a narrow segment of interested persons.

Under this factor, the identity and qualifications of the requester—i.e., expertise in the subject area of the request and ability and intention to disseminate the information to the public—is examined. WELC has long-standing experience and expertise in the subject area of the FOIA requests, including issues related to government accountability and transparency, the protection of the natural environment, and the protection of the nation’s waters. WELC disseminates the information it receives through FOIA requests in a variety of ways, including, but not limited to: analysis and distribution to the media, distribution through publication and mailing, posting on its website, emailing and list serve distribution to our members across the United States, and via public meetings and events.

In addition, WELC disseminates information obtained by FOIA requests through comments to administrative agencies, and where necessary, through the judicial system. In the past, WELC has posted, and disseminated numerous stories on existing and proposed actions by agencies regarding their impacts on the environment. WELC intends to share the information received from this FOIA request with our impacted members across the country, the media and our allies who share a common interest in the operations of the EPA. WELC unquestionably has the “specialized knowledge” and “ability and intention” to disseminate the information requested in the broad manner outlined above, and to do so in a manner that contributes to the understanding of the “public-at-large.”

4. The disclosure must contribute “significantly” to public understanding of government operations or activities.



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The public's understanding must be likely to be enhanced by the disclosure to a significant extent. As discussed in section (2) above, the records requested will significantly contribute to the public understanding of governmental operations, and activities. Disclosure of the communications by the agency and other interactions with outside parties will significantly enhance the public's understanding of whether the administration is advancing the stated mission of the EPA to protect public health and the environment.

5. Whether the requester has a commercial interest that would be furthered by the requested disclosure.

WELC has no commercial interest in the requested records. Nor does it have any intention to use these records in any manner that "furthers a commercial, trade, or profit interest" as those terms are commonly understood. WELC is a nonprofit, tax-exempt organization under sections 501(c)(3) and 501(c)(4) of the Internal Revenue Code, and as such has no commercial interest. The requested records will be used for the furtherance of WELC's mission to inform the public on matters of vital importance to the environment and public health.

6. Whether the magnitude of the identified commercial interest of the requester is sufficiently large, in comparison with the public interest in disclosure, that disclosure is "primarily in the commercial interest of the requester."

As noted above, WELC has no commercial interest in the requested records. Disclosure of this information is not "primarily" in WELC's commercial interest. In comparison, it is clear that the disclosure of the information requested is in the public interest. It will contribute significantly to public understanding of EPA's operations and activities. WELC respectfully requests, because the public will be the primary beneficiary of this requested information, that EPA waive processing and copying fees pursuant to 5 U.S.C. § 552(a)(4)(A).

In the event that your agency denies a fee waiver, please send a written explanation for the denial. In the event that fees are ultimately assessed, please do not incur expenses beyond \$250 without first contacting our office for explicit authorization.

Thank you for your cooperation. If you find that this request is unclear in any way please do not hesitate to call me to see if I can clarify the request or otherwise expedite and simplify your efforts to comply. I can be reached at (206) 579-5072.



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